

**MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE LCM DEFENDANTS
TO FILE THEIR PRE-TRIAL BRIEF CONTAINING
CONFIDENTIAL INFORMATION UNDER SEAL**

Defendants LCM XXII LTD., LCM XXIII LTD., LCM XXIV LTD., LCM XXV LTD., LCM 26 LTD., LCM 27 LTD., and LCM 28 LTD. (the “**LCM Defendants**”), respectfully represent as follows in support of this motion (“**Motion to Seal**”):

BACKGROUND

1. A hearing on the adversary proceeding styled as *Serta Simmons Bedding, LLC et al. v. AG Centre St. Partnership, et al.*, Case No. 23-09001 (the “**Adversary Proceeding**”) is scheduled to commence on May 15, 2023 at 9:30 a.m. (Central Time).

2. In connection with this proceeding, the LCM Defendants filed a pre-trial brief (the “**Pre-Trial Brief**”) under seal. *See* Dkt. 245. The unsealed Pre-Trial Brief contains information that has been previously designated as Confidential or Highly Confidential material pursuant to the Stipulated Protective Order (the “**Protective Order**”) entered in the Adversary Proceeding Dkt. 74.

3. The Protective Order provides in relevant part that “[a]ll pleadings, memoranda supporting motions, briefs, deposition transcripts, discovery requests and responses, exhibits, and other documents that quote information from Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information and the Confidential Information and Highly Confidential – Attorneys’ Eyes Only Information if filed with the Court, shall be redacted from the Court filing (either by redacting the relevant text of the submission or redacting the entirety of any exhibit that has been designated as containing Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information) or filed under seal pursuant to the Court’s rules governing sealed documents, unless the Designating Party consents to such Confidential Information or Highly

Confidential – Attorneys’ Eyes Only Debtors Information being filed publicly in writing.” Protective Order § 4.2(E).

4. The LCM Defendants have on this day submitted their Pre-Trial Brief, which describes or quotes certain materials that have been designated as Confidential or Highly Confidential pursuant to the Protective Order. The Pre-Trial Brief has been filed under seal in unredacted form (Dkt. 245) and filed publicly on the docket in redacted form (Dkt. 243). The sealed version of the Pre-Trial Brief has been served on counsel for all parties to the Adversary Proceeding via e-mail.

5. Consistent with their obligations under the Protective Order, the LCM Defendants request that the Court maintain under seal the unredacted version of their Pre-Trial Brief unless the Designating Parties consent to its public filing.

RELIEF REQUESTED

6. By this Motion to Seal, pursuant to section 105(a) of the Bankruptcy Code and Rule 9037-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas, the LCM Defendants request (i) authority to file entirely under seal the Pre-Trial Brief and (ii) direction that the unredacted version of the Pre-Trial Brief remain under seal and not be made available to anyone other than the Court and the parties to this Adversary Proceeding unless later unredacted.

7. A proposed form of order granting the relief requested herein is attached hereto (the “**Proposed Order**”).

RELIEF REQUESTED SHOULD BE GRANTED

8. Section 105(a) of the Bankruptcy Code permits this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title,”

subsumed within which is the power to enforce its own orders. *See, e.g., In re Blast Energy Servs., Inc.*, 396 B.R. 676, 688 (Bankr. S.D. Tex. 2008) (bankruptcy court has “inherent power to enforce its own orders”); *In re National Gypsum Co.*, 118 F.3d 1056, 1069 (5th Cir. 1997) (noting the “undisputed power of a bankruptcy court to enforce its own orders”).

9. Local Rule 9037-1(c) provides that “[a] motion, reply, or other document may initially be filed under seal if the filing party simultaneously files a motion requesting that the document be maintained under seal.” Local Rule 9037-1(d) further provides that “[i]n some instances, it may be practicable to redact relevant confidential information from a document, and to file the redacted document in the public record. In those instances, (i) a redacted document should be filed, not under seal; and (ii) the unredacted document should simultaneously be filed, under seal.”

PREVIOUS RELIEF GRANTED

10. The Court in this action has already granted prior requests to seal exhibits and memoranda of law similar to the Pre-Trial Brief the LCM Defendants seek to seal by the instant motion, based on confidentiality designations under the Protective Order. *See, e.g., Serta Simmons Bedding, LLC et al. v. AG Centre Street Partnership, L.P., et al.*, No. 23-09001 (DRJ) (S.D. Tex. Bankr.) Dkt. 105, 106.

CONCLUSION

WHEREFORE, the LCM Defendants respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: May 14, 2023
Houston, Texas

/s/ John J. Sparacino

John J. Sparacino (SBN 18873700)

S. Margie Venus (SBN 20545900)

Regan S. Jones (SBN 24110060)

McKool Smith, PC

600 Travis Street, Suite 7000

Houston, Texas 77002

Telephone: (713) 485-7300

Facsimile (713) 485-7344

jsparacino@mckoolsmith.com

mvenus@mckoolsmith.com

rjones@mckoolsmith.com

-and -

Michael Shuster (admitted *pro hac vice*)

Vincent Levy (admitted *pro hac vice*)

Neil R. Lieberman (admitted *pro hac vice*)

Priyanka Timblo (admitted *pro hac vice*)

Brian T. Goldman (admitted *pro hac vice*)

Patrick J. Woods (admitted *pro hac vice*)

HOLWELL SHUSTER & GOLDBERG LLP

425 Lexington Avenue

New York, New York 10017

mshuster@hsgllp.com

vlevy@hsgllp.com

nlieberman@hsgllp.com

ptimblo@hsgllp.com

bgoldman@hsgllp.com

pwoods@hsgllp.com

Counsel for the LCM Defendants

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion to Seal was served by electronic delivery on all persons and entities receiving ECF notice in this adversary proceeding on May 14, 2023.

/s/ John J. Sparacino

John J. Sparacino